

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

DELPHONSO O. BREWER,

Petitioner,

v.

**CIVIL ACTION NO.: 3:19-CV-149
(GROH)**

R. HUDGINS, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is the Report and Recommendation ("R&R") of United States Magistrate Judge Robert W. Trumble. ECF No. 7. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed R&R. Magistrate Judge Trumble issued his R&R on September 26, 2019. Therein, Magistrate Judge Trumble recommends that the Petitioner's § 2241 petition [ECF No. 1] be denied and dismissed with prejudice.

I. BACKGROUND

Upon review of the record, the Court finds that the facts as explained in the R&R accurately and succinctly describe the circumstances underlying the Petitioner's claims. The Court incorporates those facts herein. However, the Court has briefly outlined the most relevant facts below.

On September 16, 2019, the pro se Petitioner filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. ECF No. 1. Therein, the Petitioner challenges his sentence, arguing there has been a change in law and his prior conviction for common

law robbery no longer qualifies as a career offender predicate. Id. at 5. The Petitioner requests the Court vacate his sentence and remand his case for resentencing without a career offender designation. Id. at 8.

II. LEGAL STANDARDS

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and of a Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to Magistrate Judge Trumble's R&R were due within fourteen plus three days of the Petitioner being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R was mailed to the Petitioner by certified mail on September 26, 2019. ECF No. 7. The Petitioner accepted service on October 1, 2019. ECF No. 9. Thereafter, the Petitioner filed a motion requesting an extension of time to file objections. ECF No. 10. The Court granted the Petitioner's motion, extending his deadline to file objections to November 22, 2019. ECF No. 11. On November 18, 2019, the Petitioner filed his objections to Magistrate Judge Trumble's R&R. ECF No. 13. Having timely filed his objections, this Court will review the Petitioner's objections to the R&R *de novo*. The Court will review the remainder of the R&R for clear error.

III. DISCUSSION

In his R&R, Magistrate Judge Trumble recommends the Petitioner's § 2241 petition be denied and dismissed with prejudice because the Petitioner is challenging his sentence on the same ground that he advanced in the District Court for the Middle District of North Carolina, and he lost after a full and fair litigation of his claim.

In the Petitioner's objections, he argues he satisfies § 2255's savings clause and his claim should be appropriately considered under his § 2241 petition. The Petitioner further argues that the "prior failures show, obviously that [§] 2255 [is] inadequate and ineffective to provide the Petitioner relief, which is why his motion under 28 U.S.C. [§] 2241 was filed." ECF No. 13 at 2. The Petitioner's argument is misplaced. Magistrate Judge Trumble did not address whether the Petitioner satisfied § 2255's savings clause because the Petitioner is not entitled to relief. He has already had a full and fair litigation of his claim and he lost. Accordingly, the Petitioner's objections are hereby **OVERRULED**.

IV. CONCLUSION

Accordingly, upon careful review of the R&R and the Petitioner's objections, it is the opinion of this Court that Magistrate Judge Trumble's R&R [ECF No. 7] should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. The Petitioner's § 2241 petition [ECF No. 1] is **DENIED** and **DISMISSED WITH PREJUDICE**. The Petitioner's sealed motion for leave to proceed in forma pauperis [ECF No. 2] and motion for hearing [ECF No. 15] are **TERMINATED** as **MOOT**.

The Clerk is **DIRECTED** to strike this matter from the Court's active docket. The Clerk is further **DIRECTED** to mail a copy of this Order to the pro se Petitioner by certified

mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: April 10, 2020



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE